

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Joint Application of Verizon Communications Inc. ("Verizon") and MCI, Inc. ("MCI") to Transfer Control of MCI's California Utility Subsidiaries to Verizon, Which Will Occur Indirectly as a Result of Verizon's Acquisition of MCI.

Application 05-04-020  
(Filed April 21, 2005)

**SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER**

**I. Introduction**

Pursuant to Rule 6(a)(3) and 6.3 of the Commission's Rules of Practice and Procedure, this scoping memo confirms the category for this proceeding, designates the principal hearing officer, and sets forth the issues and schedule for hearing pursuant to the prehearing conference conducted on June 21, 2005.

Application (A.) 05-04-020 was filed on April 21, 2005, and amended on May 9, 2005, by Verizon Communications Inc. (Verizon) and MCI Inc. (MCI) (collectively, the Applicants). The Applicants seek authorization to transfer control of MCI's California utility subsidiaries to Verizon, which will occur indirectly as a result of Verizon's acquisition of MCI.

**II. Categorization of the Proceeding; Principal Hearing Officer**

By Resolution ALJ 176-3152 on May 5, 2005, the Commission preliminarily categorized this proceeding as "Ratesetting," as defined in Rule 5(c) of the Rules of Practice and Procedure. The categorization as "Ratesetting" is hereby

confirmed. This ruling is appealable only as to category of this proceeding under the procedures in Rule 6.4.

The principal hearing officer for this proceeding is Commissioner Susan P. Kennedy.

### **III. Ex Parte Rules**

The Commission's ex parte rules applicable to this proceeding are set forth in Rules 7(c) and 7.1. These ex parte rules apply to all parties of record and, more broadly, to all persons with an interest in any substantive matter. The category of individuals subject to our ex parte rules is defined in Pub. Util. Code § 1701.1(c)(4).

### **IV. Scoping Memo**

The scope of this proceeding is governed by Pub. Util. Code § 854. Pursuant to § 854(a), no person or corporation, whether or not organized under the laws of this state, shall merge, acquire, or control either directly or indirectly any public utility organized and doing business in this state without first securing authorization to do so from this Commission. The Commission may establish by order or rule the definitions of what constitute merger, acquisition, or control activities that are subject to this section of the statute.

Applicants' position is that pursuant to § 854(a), the primary issue to be determined in this proceeding is whether the proposed transaction would be adverse to the public interest. Applicants argue, however, that § 854(b) does not apply to this proceeding. Moreover, applicants believe that pursuant to its authority under § 853(b), the Commission should exempt this proceeding from the requirements of § 854(b) and § 854(c). The Applicants thus propose that the Commission limit its review of the proposed transaction accordingly.

Protests to the application were filed by a variety of parties, either opposing the application, or asking that mitigating conditions be required in the event that the Commission approves the application. Protestants contend that the proposed transaction, at least in the form proposed by the Applicants, would be detrimental to the public interest, and raise disputed facts requiring evidentiary hearings.

Protestants also disagree concerning the applicability of 854(b) and the permissibility of a public interest exemption under § 853(b). In addition, protestants argue that § 854(b) does apply, and should be required as being within the scope of the proceeding. Moreover, protestants argue that the Commission should not exempt the transaction from the requirements of § 854(c).

For purposes of going forward with this proceeding, I direct the Applicants to continue to provide all the information they believe necessary and appropriate to demonstrate compliance with all of the provisions of Pub. Util. Code §§ 854(b) and (c). I make this ruling not to determine the applicability of the statute, but in the interest of ensuring that any potential disagreement over the statute's applicability not be cause for delay in processing the application.

Thus, without prejudging the substantive merits as to the applicability of §§ 854(b) and (c), or the appropriateness of an 853(b) exemption, I hereby direct that the scope of the proceeding shall incorporate the requirements of §§ 854(b) and (c). I reiterate that this ruling does not make any substantive determination on the statutes' applicability. A determination on the substantive merits of whether these statutory provisions apply will be made in the future.

Sections 854(b) and (c) set forth specific requirements that a qualifying transaction must satisfy to warrant Commission approval. Under § 854(b), the

Commission is to equitably allocate the economic benefits of the transaction between ratepayers and shareholders. Also, with assistance from the Attorney General, the statute calls for the Commission to consider any potential anti-competitive effects.<sup>1</sup>

Section 854(c) further requires the Commission to evaluate the transaction according to specific criteria.<sup>2</sup> The statute prescribes that Applicants have the burden of proving, by a preponderance of evidence, that subdivisions (b) and (c) have been satisfied. (Pub. Util. Code, § 854(e).)

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<sup>1</sup> Pub. Util. Code § 854, subd. (b) requires that a transaction:

- (1) Provides short-term and long-term economic benefits to ratepayers.
- (2) Equitably allocates, where the commission has ratemaking authority, the total short-term and long-term forecasted economic benefits, as determined by the commission, of the proposed merger, acquisition, or control, between shareholders and ratepayers. Ratepayers shall receive not less than 50% of those benefits.
- (3) Not adversely affect competition. In making this finding, the commission shall request an advisory opinion from the Attorney General regarding whether competition will be adversely affected and what mitigation measures could be adopted to avoid this result.

<sup>2</sup> Subdivision (c) requires the Commission to consider eight factors, as follows:

- (1) The financial condition of the resulting public utility doing business in the state.
- (2) The quality of management of the resulting public utility doing business in the state.
- (3) The quality of management of the resulting public doing business in the state.
- (4) Fairness to affected public utility employees, including both union and nonunion employees.
- (5) Fairness to the majority of all affected public utility shareholders.
- (6) Benefits on an overall basis to state and local economies, and to be communities in the area served by the resulting public utility.
- (7) The preservation of jurisdiction of the commission and the capacity of the commission to effectively regulate and audit public utility operations in the state.
- (8) Mitigation measures to prevent significant adverse consequences which may result.

## **V. Evidentiary Hearings**

Parties disagree as to whether evidentiary hearings are necessary for developing the record for this application. Based upon hearing parties' arguments and in view of the protests that have been filed, I defer ruling on the request for evidentiary hearings until parties have filed testimony as set forth in the procedural schedule adopted below and have been afforded an opportunity for motions and responses on this matter. Those requesting hearings should identify material issues of fact and explain why we cannot resolve them with the record already developed. Those opposing hearings should respond on the schedule ordered. If I order evidentiary hearings at that point, I will simultaneously set a second pre-hearing conference to address witness scheduling, and any further procedural details, as warranted. If evidentiary hearings are ordered, the procedural schedule will be revised accordingly.

## **VI. Public Participation Hearings**

Public participation hearings have been scheduled in this application via a separate ruling in order to provide an opportunity for members of the public to appear and be heard with respect to the pending application. These public participation hearings are scheduled to be conducted in Whittier, Long Beach, and San Bernardino. The separate ruling has set the specific times, locations, and other pertinent information relating to the schedule for the public participation hearings.

## **VII. Procedural Schedule**

The schedules below are adopted for the service of testimony, evidentiary hearings, briefs, and related matters required to decide this application. The Applicants' opening testimony will be the testimony already filed as exhibits to the application. Two alternate procedural schedules are set forth below. The

first schedule assumes no evidentiary hearings will be held. The second schedule assumes evidentiary hearings will be held.

Schedule I (No evidentiary hearings)

Intervenors serve reply testimony	August 1, 2005
Concurrent rebuttal testimony	August 22, 2005
Motions, if any, stating whether evidentiary hearings are needed	August 26, 2005
Reply to motions	August 30, 2005
Assigned Commissioner ruling on applicable law, need for and scope of hearings	September 1, 2005
Opening briefs	September 26, 2005
Reply briefs	October 3 , 2005
Proposed decision	October 19, 2005
Final Commission decision	November 18, 2005

Schedule II (With Evidentiary Hearings)

Intervenors serve reply testimony	August 1, 2005
Concurrent rebuttal testimony	August 22, 2005
Motions, if any, stating whether evidentiary hearings are needed	August 26, 2005
Reply to motions	August 30, 2005
Assigned Commissioner ruling on applicable law, need for and scope of hearings	September 1, 2005
Evidentiary hearings	September 21-23, 2005
Opening briefs	October 7, 2005
Reply briefs	October 14, 2005
Proposed decision	October 31, 2005
Commission decision	December 1, 2005

For the convenience of the parties, a second prehearing conference, if one is ordered, may be scheduled as a telephone conference call. Otherwise, it will be conducted in the Commission hearing room, State Office Building, 505 Van Ness Avenue, San Francisco. A ruling on this subject will issue no later than 30 days prior to the second prehearing conference.

**VIII. Discovery Matters**

As discussed at the prehearing conference, in the event that parties are not able to resolve any disputes over discovery on a reasonably prompt basis, they



shall bring the dispute before the Commission without delay in the form of a motion to compel. Any such motion shall identify specifically the nature of any dispute, with justification for the production of any discovery materials. If parties cannot reach agreement on the appropriate terms of a nondisclosure agreement for information claimed to be confidential, parties shall bring such disputes to the Commission through a motion to compel. Motions to compel should be filed and shall be served electronically. Responses to such motions shall be filed and shall be served electronically within three business days. To the extent possible, rulings on such motions shall be filed and served electronically within three business days thereafter.

**IT IS RULED** that:

1. This ruling confirms the categorization of this proceeding as ratesetting, as defined in Rule 5(c) of the Commission's Rules of Practice and Procedure.
2. The principal hearing officer for this proceeding is Assigned Commissioner Susan P. Kennedy
3. The ex parte rules as set forth in Rule 7(c) and 7.1 shall apply to this proceeding.
4. The scope of this proceeding is described in Section IV above, and the schedule is hereby adopted as set forth in Section VII.
5. Public participation hearings shall be held in this proceeding, with the specific notification of times and places to be provided in a separate ruling.
6. The official service list, as established at the prehearing conference, is attached to this ruling. The rules for electronic service as set forth in Rule 2.3.1 shall apply to this proceeding.
7. In the event, or to the extent, that parties are not able to resolve any disputes over discovery on a prompt basis, they shall bring the dispute before

the Commission in the form of a motion to compel, with electronic service to all parties. Responses to such motions shall be filed and shall be electronically served on all parties within three business days. To the extent possible, a ruling on a motion to compel will issue within three days of the date that responses are filed.

Dated June 30, 2005, at San Francisco, California.

/s/ SUSAN P. KENNEDY

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Susan P. Kennedy  
Assigned Commissioner

**APPENDIX**  
**(List of Appearances)**

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Assigned Commissioner's Scoping Memo and Ruling on all parties of record in this proceeding or their attorneys of record.

Dated June 30, 2005, at San Francisco, California.

/s/ VANA F. WHITE

Vana F. White

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.